

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Eagle Builders & Remodelers, Inc.	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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The above matter came on for hearing before Administrative Law ("ALJ") Judge Richard C. Luis on February 21, 2006, at the Office of Administrative Hearings in Minneapolis.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Department of Labor and Industry ("Department"). Ronald Sterry, 12390 West 162nd Street, Lakeville, MN 55044-9398, appeared on behalf of Eagle Builders & Remodelers, Inc. ("Licensee", "Respondent"). The record closed at the conclusion of the hearing on February 21, 2006.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy J. Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **STATEMENT OF ISSUE**

Whether disciplinary action should be taken against Respondent because it and its qualifying person, Ronald Sterry, failed to satisfy a judgment in favor Anthony Ellis arising out of Ellis's work as a subcontractor for the Respondent and Sterry on a residential remodeling project; because Ronald Sterry, the Respondent's qualifying person, failed to satisfy a judgment against him in favor of Myo-Tech; because Mr. Sterry failed to provide Matt and Christine Kottwitz with a written contract or change orders containing a description of work to be performed, materials to be used or the basis on which price would be calculated; and because Ronald Sterry provided false and misleading information on the Financial Disclosure Form filed with the Department on January 24, 2006?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On January 9, 1992, the Department issued Respondent Residential Building Contractor's License No. 1426.

2. Ronald Sterry is Respondent's qualifying person and Chief Operating Officer.<sup>1</sup>

3. Sometime in 2003, Respondent hired Anthony Ellis to work as its subcontractor on a residential remodeling project on a home located at 2316 James Avenue North in Minneapolis. Respondent agreed to pay Ellis \$3,583 in exchange for siding, soffit and fascia work. Respondent paid Ellis a \$100 advance, and Ellis performed the siding, soffit and fascia work on the residence in a substantial fashion.

4. The Respondent failed to pay Ellis any additional money for the subcontracting services rendered. Ellis filed suit against the Respondent and Sterry in Dakota County Conciliation Court. On June 4, 2004, after a hearing on the merits, the court awarded Ellis a \$4,131.77 judgment.<sup>2</sup>

5. Sterry appealed the Conciliation Court judgment to Dakota County District Court, and the Court issued Findings of Fact, Conclusions of Law, Order for Judgment and a Judgment after a trial de novo on September 7, 2004. Judge Kathryn D. Messerich found that Ellis substantially performed his work under the contract and rejected Sterry's defenses that the work was poorly performed and caused damage to the property.

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<sup>1</sup> Amended Statement of Charges, p. 2; and Exs. 7, 9 and 11.

<sup>2</sup> Ex. 2.

6. Judge Messerich awarded to Ellis a \$3,483 judgment against Sterry. The Respondent was not named as a judgment debtor.

7. On July 25, 2005, pursuant to Minn. R. Civ. P. 60.01, Judge Messerich issued an Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment, which added the Respondent as a named defendant and judgment debtor to the earlier judgment. She also issued Amended Findings and Conclusions that allowed Ellis to recover an additional \$114.50 in costs and fees against the Respondent and Sterry, for a total amended judgment of \$3,597.50.<sup>3</sup>

8. In August of 2005, Ellis complained to the Department that the Respondent and Sterry had refused to satisfy the Amended Judgment in the amount of \$3,597.50. Ellis alleged that the Respondent and Sterry offered to pay approximately one-third of the amount owed to settle the judgment.<sup>4</sup>

9. On August 26, 2005, the Department received a letter from the Respondent and Sterry admitting that they had not satisfied Ellis's judgment.<sup>5</sup> Mr. Sterry signed the letter as "Ron Sterry, Chief Operating Officer". As of the time of the hearing, the Respondent has failed to satisfy the Ellis judgment.

10. On May 13, 2002, Myo-Tech, Inc. obtained a \$2,139 judgment against Mr. Sterry in Dakota County Conciliation Court.<sup>6</sup> He did not appeal the judgment, and it is now final. As of the date of hearing, Mr. Sterry has failed to satisfy Myo-Tech's judgment.

11. On April 4, 2005, Respondent entered into an oral contract with Lakeville homeowners, Matt and Christine Kottwitz to remodel a bathroom for \$1,200. During construction, the Kottwitzes requested upgrades of a larger bathroom, in-floor heating and additional electrical work. No written change orders were provided to the Kottwitzes by Respondent. On or about June 8, 2005, Matt and Christine Kottwitz filed a written complaint regarding this matter with Commissioner of Commerce Glenn Wilson.<sup>7</sup>

12. On July 7, 2005, the Respondent provided a written response to the Department's request for a response to the Kottwitz complaint. The written response was signed by "Ron Sterry, Chief Operating Officer".<sup>8</sup>

13. On January 24, 2006, Ron Sterry filled out and signed a Financial Disclosure Form in response to an attempt by Myo-Tech, Inc., to collect its judgment amount against Mr. Sterry. On that form, Mr. Sterry declared that he had no employment, had no sources of income and was not the owner or partner of any business.<sup>9</sup>

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<sup>3</sup> Ex. 4.

<sup>4</sup> Exs. 5 and 6.

<sup>5</sup> Ex. 7.

<sup>6</sup> Ex. 13.

<sup>7</sup> Ex. 10.

<sup>8</sup> Ex. 11.

<sup>9</sup> Ex. s. 14 and 15.

Based on the Findings, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subd. 7 and 326.91, subd. 1.

2. The Respondent was given timely and proper notice of the Prehearing Conference and Hearing in this matter, and the Department has complied with all procedural requirements of law and rule.

3. Respondent violated Minn. Stat. §§ 45.027, subds. 7(a)(2) and 7(a)(4) and 326.91, subds. 1(6) and 1(12) when it and its Chief Operating Officer and qualifying person, Ronald Sterry, failed to satisfy a judgment in favor of Anthony Ellis, which judgment arose out of Ellis's work as a subcontractor for the Respondent and Sterry on a residential remodeling project. The Respondent and Mr. Sterry had a judgment entered against them for failure to pay Ellis and have been shown to be incompetent, untrustworthy and financially irresponsible by failing to satisfy the Ellis judgment.

4. By failing to provide the Kottwitzes with a written contract or change orders containing a description of the work to be performed, the materials to be used, or the basis on which price could be calculated, the Respondent violated Minn. Stat. § 326.91, subd. 1(5) and Minn. R. 2891.0030.

5. The Respondent's qualifying person and Chief Operating Officer, Ronald Sterry, has failed to satisfy a judgment in the amount of \$2,139 against Myo-Tech. As a result, the Respondent is subject to discipline because Sterry was incompetent, untrustworthy and financially irresponsible in his failure to satisfy the Myo-Tech judgment within the meaning of Minn. Stat. § 326.91, subd. 1(6).

6. The Respondent's qualifying person and Chief Operating Officer, Ronald Sterry, did not provide false and misleading information on the Financial Disclosure Form dated January 24, 2006, nor did he engage in a deceptive or dishonest practice within the meaning of Minn. Stat. § 326.91, subd. 1(2) in connection with that filing.

7. An order imposing discipline against the Respondent for violations of the statutes and rules specified in Conclusions 3 through 5 above is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

## **RECOMMENDATION**

IT IS RECOMMENDED that appropriate disciplinary action be taken against the license of Eagle Builders & Remodelers, Inc.

Dated this 23rd day of April, 2011

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped, No Transcript

## **MEMORANDUM**

Mr. Sterry was denied his request for a continuance in this proceeding by the Administrative Law Judge. Mr. Sterry sought information from Anthony Ellis that related more to the merits of the underlying case on which Ellis has already obtained a judgment than to the matter now before the Administrative Law Judge and the Commissioner of Labor and Industry. Specifically, Mr. Sterry sought a list of all employees, contractors and laborers hired by Mr. Ellis during the course of the project in question, as well as social security numbers, federal I.D. numbers, addresses and telephone information. He also wanted copies of W-2 or 1099 forms provided to all employees, contractors and laborers hired by Ellis during the course of the project, copies of all of Ellis's certificates of insurance for workers' compensation, liability and general insurance for the period of time relevant to the project and a list of all materials, suppliers and receipts for materials purchased or used.

As noted in Mr. Sterry's letter to Ellis,<sup>10</sup> the information is sought at this time to facilitate an attempt to resolve or settle the unpaid judgment. What is material now for the purposes of this matter is that the judgment has not been satisfied.

The Administrative Law Judge is not persuaded that Mr. Sterry's statement on the Financial Disclosure Form<sup>11</sup> admitted to the hearing record is the providing of false and misleading information which would subject the Licensee to discipline because of deceptive or dishonest practices on the part of its qualifying person, Mr. Sterry. Question 10 on the form asked Mr. Sterry to name his "Employer or Business", to which he replied "None". To Question No. 17, Mr. Sterry replied "NA" when asked how often he was paid. At Question 18, which asks, "Do you have income from any other source?", Mr. Sterry checked the box for "No". At other places on the form, Mr. Sterry denied the ownership of any tangible or intangible assets or that he had a checking or

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<sup>10</sup> Licensee's Ex. 16.

<sup>11</sup> Ex. 15.

savings account. Although Mr. Sterry noted in several other documents connected to this case that he was “Chief Operating Officer” of the Respondent, the fact that he is in that position does not establish, in itself, that he is employed for monetary compensation or has any source of income or is the owner or partner of any business. In fact, Mr. Sterry testified that his wife, Sharon Sterry, owns Eagle Builders & Remodelers, Inc. Mr. Sterry’s sworn testimony that he has no income from his position as Chief Operating Officer of the Respondent has not been challenged by substantial evidence. As a result, the record fails to establish that Ronald Sterry, the Respondent’s qualifying person, engaged in deceptive or dishonest practices because of his providing of false or misleading information on the Financial Disclosure Form dated January 24, 2006.

In connection with Mr. Sterry’s calling himself “Chief Operating Officer” of the Respondent, it is noted that this fact stands as a piece of evidence establishing further that Mr. Sterry’s actions in connection with the other elements of the Department’s case can be used for disciplinary action against the License of Eagle Builders & Remodelers, Inc. Minn. Stat. § 326.91, subd. 1 makes it clear that disciplinary action may be imposed on a Licensee if one of its officers (as well as its qualifying person) engages in fraudulent, deceptive or dishonest practices or is shown to be incompetent, untrustworthy or financially irresponsible. As noted in the body of this Report, Mr. Sterry has declared himself to be an officer of Eagle Builders, as well as its qualifying person, and facts establishing the allegations that he was incompetent, untrustworthy and financially irresponsible have been proven.

**R.C.L.**